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TO RUEHC/SECSTATE WASHDC 9110  
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UNCLAS SAN SALVADOR 000249

SIPDIS

STATE PASS USTR  
COMMERCE FOR ITA/MAC/OIPR

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TAGS: [ECON](#) [ETRD](#) [KIPR](#) [ES](#)  
SUBJECT: EL SALVADOR: 2008 SPECIAL 301 INPUT

REF: A) STATE 9475 (NOTAL)  
B) SAN SALVADOR 186

¶1. SUMMARY. El Salvador continues to move forward on implementing its IPR commitments under CAFTA-DR, including data exclusivity regulations. The Government of El Salvador likewise continues to conduct successful enforcement actions against both distributors and producers of pirated material. Post recommends against including El Salvador in the Special 301 report. END SUMMARY.

#### Legal Framework

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¶2. El Salvador implemented most of its legislative changes to intellectual property laws required under CAFTA-DR during calendar years 2005 and 2006. In December 2005, El Salvador amended the Intellectual Property Promotion and Protection Law, Law of Trademarks and Other Distinctive Signs, and Penal Code to implement its CAFTA-DR obligations. El Salvador recently ratified the Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite and the Trademark Law Treaty is pending before the National Assembly.

#### WIPO Treaties

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¶3. El Salvador has ratified both the 1996 WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

#### Data Exclusivity

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¶4. After nearly two years, data exclusivity regulations are nearing implementation (reftel B). As of February 27, the Minister of Health had approved the latest draft; it is now awaiting President Saca's signature.

#### Enforcement

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¶5. Salvadoran law enforcement plays an active role in IPR enforcement, targeting both "traditional" pirated goods like DVDs and CDs and pirated clothing and other products being imported from China. As of December 12, according to press reports, the Policia Nacional Civil (PNC) had seized goods in 2007 including:

- 124,734 DVDs
- 104,249 CDs
- 13,068 unregistered pharmaceuticals
- \$1,534,670 in pirated clothing
- \$340,208 in pirated cigarettes
- \$250,320 in pirated shoes

¶6. Piracy of optical goods remains a concern in El Salvador. The PNC have targeted domestic production facilities, shutting down

pirated CD/DVD production facilities in San Marcos, which had been producing an estimated 180,000 DVDs/year, and in San Salvador, which had been producing 5,000 CDs/day. For the first ten months of 2007, the PNC and Attorney General's office estimate that they have seized \$1.5 million in optical media and arrested 30 individuals.

¶7. The judiciary remains the weak link in criminal IPR enforcement. According to one leading IPR attorney, many judges simply do not understand the complexities of intellectual property law. As a workaround, cases are sometimes brought as more general "commercial violations" under El Salvador's criminal code. More judicial training, however, is the best remedy.

Comment and Recommendation

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¶8. Given El Salvador's efforts to strengthen its IPR framework, especially the imminent implementation of data exclusivity regulations, and its continued commitment to enforcement, Post recommends against including El Salvador in the 2008 Special 301 report.

Glazer